

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION
NO. 04-11578PBS

FIREMAN'S FUND INSURANCE)
COMPANY)
As Subrogee of Hodan Properties, Inc.)

Plaintiff,)
vs.)

FIRE SYSTEMS, INC.,)
FIRE SUPPRESSION SYSTEMS OF)
NEW ENGLAND, INC.,)
PRO CON, INC., and)
BRIERE & PAQUETTE, INC. f/k/a)
PAQUETTE ELECTRIC CO, INC.)

Defendants)

**EMERGENCY MOTION BY DEFENDANT FIRE SUPPRESSION SYSTEMS
OF NEW ENGLAND, INC. TO PRECLUDE EXPERT TESTIMONY
AS A RESULT OF FAILURE TO DISCLOSE EVIDENCE
AND SPOILIATION OF THAT EVIDENCE**

Now comes the defendant, Fire Suppression Systems of New England, Inc. and respectfully requests that this Honorable Court preclude the plaintiff, Fireman's Fund Insurance Company, and co-defendant, Fire System, Inc.'s experts from offering testimony in this matter. As grounds therefore, the defendant states that each of these parties and their witnesses were aware that the sprinkler fitting which is at the heart of this case was retained after the loss and were made available for inspection by these parties experts. Despite multiple rules requiring disclosure, neither of them ever disclosed the existence of this tangible and highly relevant forensic evidence. Trial is

imminent and the failure to make disclosure has caused FSSNE substantial prejudice that cannot be cured at this late hour. For these reasons and those that are set forth in the attached Memorandum of Law, FSSNE respectfully requests a preclusive order.

The defendant,

Fire Suppression Systems of
New England, Inc.
By its attorneys,

/s/Peter E. Montgomery

Jocelyn M. Sedney, BBO# 552115

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Dated: August 28, 2006